

**In the Environment Court of New Zealand
Wellington Registry**

**I Te Kooti Taiao o Aotearoa
Whanganui a Tara**

ENV 2022

Under the Resource Management Act 1991 (RMA)
In the matter of an appeal under Clause 14(1) of the First
Schedule of the Act
Between Ōmahu Marae, (HUPHA) - Ngāti Hinemanu, Ngāi
Te Upokoiri, Ngāti Honomōkai, Ngāti Mahuika.
Appellant
And Hawkes Bay Regional Council
Respondent

**Notice of Appeal by Ōmahu Marae Trustee, Ngāti Hinemanu,
Ngāi Te Upokoiri, Ngāti Honomōkai, Ngāti Mahuika Hapu
Authority Iwi Incorporated (Plan Change 9 to Hawkes Bay
Regional Resource Management Plan)**

Dated this day 18th of October 2022

Filed by

HUPHA – Ngāti Hinemanu, Ngāi Te Upokoiri me ōna Piringa Hapū
Authority.
Ōmahu Marae Trustees.
Ōmahu Marae Hapū Chairman.

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To: The Registrar
Environment Court
Whanganui a Tara

- 1 Ōmahu Marae, Ngāti Hinemanu, Ngāi Te Upokoiri, Ngāti Honomōkai, Ngā Ngāti Mahuika Hapu Authority appeals against decisions of the Hawkes Bay Regional Council (**Council**) on Plan Change 9 to the Hawkes Bay Regional Resource Management Plan (**Decision** or **Plan Change 9**, as the context requires).
- 2 Ōmahu Marae, Ngāti Hinemanu, Ngāi Te Upokoiri me ōna Piringa Hapu Authority lodge this appeal collectively and as a successor of the following submissions (#223 – Nga Kaitiaki o te awa a Ngaruroro – Jenny Mauger, #55 Delia Ropiha, #56 Betty Hanara, #57 Melanie Nuku, #64 Owen Tiopira, #65 Nadia Staples, #115 Patricia Nuku, #60 Junior Hakiwai, # 111 Lisa Tuhi, # 125 Moana Mackey, #139 Charmaine Pene & Jamie Karetu, #212 Omahu School – Lyn Pohe, #227 Owhaoko C Trust – Peter MacGregor, #228 Tania Huata-Kupa and Mark Kupa, #225 Mary Tukiwaho, #234 Stephen Randell), on Plan Change 9.
- 3 Ōmahu Marae / HUPHA is not a trade competitor for the purposes of s308D RMA.
- 4 Ōmahu Marae / HUPHA received notice of the Council’s decisions on Plan Change 9, on 09 September 2022.
- 5 The decisions were made by independent Commissioners with delegated authority on behalf of Council.
- 6 Relevant provisions appealed by Ōmahu Marae / HUPHA, and associated relief, are set out below.

Reasons for the appeal

- 7 Proposed Plan Change 9, Tūtaekurī, Ahuriri, Ngaruroro, Karamū and Heretaunga Aquifer (the TANK catchments) are significant freshwater

taonga of tāngata whenua. As hapū of these lands, we exercise rangatiratanga over these freshwater taonga and all that they embrace. These taonga have their own 'Mana' and have sustained and nurtured our people both physically and metaphysically for generations and as such are captured in our whakapapa, Pepehā, pūrakau, whakatauākī. We have a (kaitiakitanga) responsibility to in turn care, protect and respect these waters for future generations. This plan does not reflect this responsibility in that it lacks holistic application, long term consideration and promotes "economic sustainability" as a priority contrary to our culture and tikanga.

- 8 Over-allocation, over-abstraction, poor water quality are related issues, and need to be addressed in accordance with the aforementioned values and obligations as part of our culture and the management of these waters.
- 9 The Resource Management Act 1991 and subsequent documents including the priorities identified by the NPS-FM 2020 have provisions to give effect.
- 10 Given the nationally significant values, and our whakapapa relationship, whanau of Omahu Marae, Ngāti Hinemanu, Ngāi Te Upokoiri me ōna Piringa Hapu Authority. lodged a number of comprehensive submissions on Plan Change 9 seeking relief. For the most part, the decisions version of Plan Change 9 has rejected, or rejected in part, those submission, the concerns of our whanau and relief sought. Accordingly, this Appeal relies on the same or similar grounds, relief, and scope identified by whanau submissions of Omahu Marae, Ngāti Hinemanu, Ngāi Te Upokoiri, Ngāti Honomōkai, Ngāti Mahuika Hapu authority submission's (#223 – Nga Kaitiaki o te awa a Ngaruroro – Jenny Mauger, #55 Delia Ropiha, #138 Marei Apatu, #56 Betty Hanara, #57 Melanie Nuku, #64 Owen Tiopira, #65 Nadia Staples, #115 Patricia Nuku, #60 Junior Hakiwai, # 111 Lisa Tuhi, # 125 Moana Mackey, #139 Charmaine Pene & Jamie Karetu, #212 Omahu School – Lyn Pohe, #227 Owhaoko C Trust –

Peter MacGregor, #228 Tania Huata-Kupa and Mark Kupa, #225 Mary Tukiwaho, #234 Stephen Randell,) as identified by the **Appendices** to this Appeal.

11 General reasons for the appeal include that Plan Change 9:

11.1 does not promote sustainable management of resources and will not achieve the purpose of the RMA.

11.2 does not give effect to Te Mana o te Wai and the NPS-FM 2020.

11.3 does not implement tikanga or recognize its relevance to appropriateness of Plan Change 9 provisions.

11.4 does not recognise and provide for Ōmahu Marae / HUPHA Mahinga Kai, Kaitiakitanga and ancestral connections to named ancestral rivers and tributaries, Wāhi Tapu and Taonga, address Treaty rights and proprietary interests, and cultural wellbeing.

11.5 tikanga, the customary rules which govern Māori life, in particular, the weight that tikanga ought to be given in this case because it involves some central concepts like Mana, Whanaungatanga and Whakapapa, thus tikanga principles as accepted by the common law should apply to all

11.6 as indigenous people recognition we see ourselves as equal participants as Free Trade Agreements servicing the Māori economy. We also enjoy inherent whakapapa connections through Global Treaties.

11.7 the waterways modification channeling, dams, diversions, and engineering i.e., restraining the river through flood control mitigation e.g., stop banks, exotic riverbank plantings, and interference with natural estuarine

characteristics. Latest science supports mātauranga a hapū values

11.8 Whakaputanga, on behalf of our taonga tuku iho, kōrero tuku iho and tikanga tuku iho mō te wai.

11.9 does not address relevant principles of te Tiriti o Waitangi, including rangatiratanga and active protection of freshwater taonga.

Relief

- 1 12 The overall approach taken in the plan change and subsequent catchments is that recognition of cultural values is through Te Ao Pakeha values and indicators. There's an assumption that tāngata whenua values will be met by these indicators that approximate our cultural values, such as Mauri. It's our submission that tāngata whenua indicators add value and provide a strong foundation and framework for sound holistic assessment of overall environmental well-being, long term sustainability and sound management. We submit coexistence of parallel world views can exist in this context and that existing outcomes demonstrate that priority focus and measures for Te Ao Pakeha values are not comprehensive enough to uphold Council's responsibilities.
- 2 13 Reduce number and content of objectives and policies so that clear priorities are set that give effect to Te Mana o te Wai, in particular mana, health and well-being of our waterways.
- 3 14 Restore Mana (Mana motuhake) and Mauri, both in terms of water quality, water quantity and water levels to our waters.

Water Allocation

- 15 Plan Change 9 raises the issue of allocation of water within degraded, over abstracted, and over-allocated TANK catchments. It does not use the allocative tools that are available to give effect to Te Mana o Te Wai.

4 16 Avoid over abstraction and unsustainable management including preference for natural solutions and sustainable management as opposed to engineered off-setting and entrenching of past 'poor' management approaches as an example policy 41 (Paritua and Kārewarewa Streams). These approaches continually ignore cultural considerations and mātauranga with an often paternalistically [assumed] solution which require further mitigation for the mitigation e.g., stream augmentation¹.

5 17 Stronger regulations, targets and limits on water quality and water quantity. Where water take limits are effectively just that.

17.1 Reduce water takes where Te Mana o te Wai is compromised i.e., particularly where Mana is diminished. Where diminished 'Te Mana o te Wai' exists, there are tikanga and cultural obligations for improvement to restore Mana.

17.2 Give true effect to Te Mana o Te Wai for example at least 80% of naturalised flow or 80% of natural water quality.

17.3 Spring flows are restored and have their own mana. Currently no polices or rules exist to protect springs / puna.

17.4 Stream flows are restored and have their own mana. Currently streams are managed accordingly the values human place on species within the stream. Reduction in stream length and habitat are not protected and are adversely impacted by over abstraction including augmentation proposals.

¹ One streams augmentation can require 'more' augmentation on another stream, and so on and so forth.

- 17.5 Provide a groundwater (Heretaunga Aquifer) total allocation limit based on mātauranga that does not abstract a greater volume of water than what is recharged into the aquifer. Not based on user demand i.e., “actual and reasonable” non-sense.
- 17.6 Provide specific environmental groundwater “level” limits across the Heretaunga plains,
- 17.7 Provide water take limits for all waterways, sections, and sub-catchments, affected by water takes. In particular the Paritua at Bridge Pa, this is a highly over abstracted sub-catchment due to decades of over-allocation and well-documented adverse impacts on tāngata whenua, with little change. Protect the Mauri o the wai.
- 17.8 Decisions and management is based on holistic perspective that includes the highest preservation of ecosystems and “natural” processes.

Water Quality

- 18 Water quality and ecosystem health are degraded in some areas of the TANK catchments. Targets for water quality in the proposed plan are too far away and too unambitious. Regional Council was criticised by the Environment Court in the past² for lacking ‘ambition’ the decision coming 2 years prior to the largest recorded gastro outbreak in recorded history globally. This involved the same waterbody.
- 19 The Ngaruroro River has high water quality and exceptional indigenous fish communities that need to be protected and maintained. However, sediment is a key issue for the Ngaruroro River along with elevated nutrients sourced from land in the tributaries.
- 20 The Tūtaekurī River shows some evidence of declining ecosystem health in the lower reaches and has elevated nutrients in the mainstem and tributaries.

² *Ngati Kahungunu Iwi Incorporated v Hawkes Bay Regional Council ENV 2013 WLG50*

- 16 21 Nutrient inputs to the Waitangi Estuary from the Ngaruroro, Tūtaekurī and Karamū Rivers need to be reduced to provide for ecosystem health.
- 17 22 The Ahuriri and Karamū catchments have degraded ecosystem health, heavy sedimentation (including contaminated sediment) and poor dissolved oxygen levels which need to be improved – they have the poorest water quality in the Hawkes Bay Region and are unsuitable for primary contact despite being highly valued culturally and recreationally.
- 6 23 The diffuse impacts of production land use and contaminants from urban land are key contributors to degraded water quality in the TANK catchments and should be more effectively regulated through PC9 to maintain or achieve water quality objectives and targets in Schedule 26 and to meet the requirements of sections AA and A of the NPS FM.
- 7 24 Clear objectives (with stated goals or outcomes) are needed to safeguard life-supporting capacity, ecosystem health and human health, to protect the significant values of outstanding freshwater bodies and wetlands, to maintain or improve water quality and to recognise Te Mana o te Wai.
- 25 The benchmark for ALL water is Waimāori providing for all wai and kai.
- 25.1 Waimāori water in its natural state and suitable consumption. Being natural it is a taonga tuku iho, imbued with spiritual energy. Drinking-water is often referred to as Waimāori, however additives such as chlorine or fluoride, as well as contaminant concentrates due to land use, do not constitute as natural water quality, and drinking water, therefore, will not always be regarded as Waimāori. For Ngāti Hinemanu Ngāi Te Upokoiri me ōna Piringa Hapū, the optimal standard for water quality is Waimāori (2008, Kahungunu ki Kahungunu ki tai, Marine and freshwater strategy)

25.2 Waimāori finds its own direction and pathway as it flows over and through the whenua, this natural pathway highlighting the sub-value of ki-uta...ki tai. The status of Waimāori (natural water quality) reflects the nature of the land, creating a harmony that is logical and progressive. Natural character is one component of Waimāori, including natural spring flows and fluctuations, sinuosity and variations in flow caused by precipitation or barometric pressures. Human interaction with Waimāori through water-related activities or activities on land can have complementary or negative effects. These can often compound as Waimāori flows through more populated areas.

Management and Peoples

- 8 26 Establish Freshwater Management Units alongside tāngata whenua so our waters are afforded the most appropriate and specific management possible and accordance with the National Policy Statement for Freshwater Management which, directs Councils to enable tāngata whenua to identify our values that apply to any FMU or part of an FMU. This process had commenced by Regional Council through plan development but withdrawn in the proposed plan. Freshwater Management Units would also help maintain and enhance water quality.
- 9 27 Establish sub-catchment freshwater management units so management can be directly responsive to the cause of adverse impacts. For example, the Karamu catchment can be split into 3 including the Bridge Pa catchment which has specific over-allocation (water shortage issues), the Poukawa catchment which has water quality and land use issues and the urban catchment which naturally has different cause and effects.

- 10 28 The Heretaunga Aquifer should be respected as having its own Freshwater Management Unit or Units, at the very least unconfined and confined. As to prevent degradation of the Heretaunga Aquifer.
- 11 29 Reject the suggestion that matters may be left to the Kotahi plan process. No details of this plan have shared with tāngata whenua and 10 years of Council facilitation do not invoke confidence that the Kotahi would necessarily provide a better and quicker process for tāngata whenua.
- 12 30 Recognise, restore, and provide for the longstanding relationship, whakapapa, and 'investment' of generations of mana whenua that far exceeds that of any other people's currently resident to these waters.
- 13 31 Meaningfully involve mana whenua and mātauranga a hapū in the management, and decision making (including relevant consents) of our waters, including monitoring to achieve true Te Mana o te Wai.
- 14 32 Enable and restore Mahinga kai and kaitiakitanga rights and responsibilities to mana whenua.
- 14 33 Plan Change 9 will continue to result in more than minor, and significant, actual, potential, and cumulative adverse effects on the environment. These include significant adverse cultural effects to Ōmahu Marae, Ngāti Hinemanu, Ngāi Te Upokoiri, Ngāti Honomōkai, Ngāti Mahuika Hapū Authority.
- 14 34 The plan fails to recognise the breadth and scope of cultural values; the insertion of a place holder in schedule 26 for "mātauranga Māori attributes", a schedule solely focused on water quality is evidence of this and contrary to the recommendations made by tāngata whenua. This placeholder also has no attachment to policies, objectives, or rules. This is covered further by the Te Taiwhenua o Heretaunga submission.
- 15 35 If relief is not granted, then decline or withdraw Plan Change 9 because it fails to address the relevant statutory and planning framework, including Rangatiratanga, Atuatanga, Mana Whenua Tikanga, Kaitiakitanga, Mahinga Kai, Utu, Rahui, and active protection of

freshwater taonga, Pt 2 RMA, and does not give effect to the NPS-FM 2020.

- 15 36 Other considerations are identified in this appeal. If all of the amendments identified by Ōmahu Marae, Ngāti Hinemanu, Ngāi Te Upokoiri, Ngāti Honomōkai, Ngāti Mahuika Hapu Authority are not made, then Plan Change 9 should be withdrawn or declined.

Other matters

- 37 The Appellant attaches the following documents to this notice.

37.1 The decision subject to appeal.

37.2 A table of submitters for service is attached to this notice.

Dated this 25th day of October 2022

Authorized signatory for Ōmahu Marae, Ngāti Hinemanu, Ngāi Te Upokoiri, Ngāti Honomōkai, Ngāti Mahuika Hapū Authority – (HUPHA)

Address for service of the Appellant: Ōmahu Marae P.O Box 2517, Hastings, 4153 HB.

